UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JON ALIN, ROBERT LOUGHEAD, and PAUL FELDMAN, individually and on behalf of all others similarly situated, Plaintiff, vs. AMERICAN HONDA MOTOR COMPANY, INC., Defendants.	**Civil Action No.: 2:08-cv-04825** **CERTIFICATION OF DAVID A. MAZIE**

DAVID A. MAZIE, of full age, certifies as follows:

1. I am a partner at the firm Mazie Slater Katz & Freeman, LLC, 103 Eisenhower Parkway, Roseland, New Jersey, 07068 ("Mazie Slater"). I have been appointed Co-Class Counsel in this case. I submit this supplemental certification in support of plaintiffs' motion for an Order to compel the Objector Appellants to post an appeal bond pursuant to Fed. R. App. P. 7. and submit to depositions.

2. Attached hereto as Exhibit "A" is the Order in Nichols v. Smithkline Beecham Corp., requiring the objectors to post a bond.

3. Attached hereto as Exhibit "B" is the Transcript of Recorded Opinion in Dewey v. Volkswagen, requiring the objectors to post a bond.

4. Attached hereto as Exhibit "C" is the Order in Dewey v. Volkswagen, requiring the objectors to post a bond.

5. Attached as Exhibit "D" is an Appendix filed in In re Cathode Ray Tube (CRT) Antitrust Litigation, --- F.R.D. ---, 2012 WL 1319881, *2 (N.D. Cal April 16, 2012), detailing the objection history of Christopher A. Badas, Esq.

I hereby certify that the foregoing statements made by me are true. I am aware if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DAVID A. MAZIE

Dated: January 13, 2012

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT NICHOLS, ET AL.	:	
	:	CIVIL ACTION
v.	:	
	:	No. 00-6222
SMITHKLINE BEECHAM CORP.,	:	
	:	
THIS DOCUMENT RELATES TO:	:	
ALL ACTIONS	:	

O R D E R

AND NOW, this 15th day of November, 2005, upon consideration of End Payor Plantiffs' Motion for Assessment of Appeal Bond (Docket No. 242), and all documents filed in connection therewith, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in part and **DENIED** in part.[1] The Motions are denied with respect to the request that

[1]End Payor Plaintiffs have moved pursuant to Rule 7 of the Federal Rules of Appellate Procedure for an order requiring the Objectors-Appellants to file a bond of $150,000 to ensure payment of costs on appeal. The majority of the $150,000 sought by End Payor Plaintiffs is intended to pay for additional settlement administration costs incurred because the appeal will delay the distribution of the Settlement Fund. End Payor Plaintiffs state that the additional administrative costs caused by the delay will run in the range of approximately $5,000 to $7,000 a month and, if the appeal process takes two years, would cost the Class as much as $170,000 in extra administrative and appeal costs.

Federal Rule of Appellate Procedure 7 states that "[i]n a civil case, the district court may require appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." Fed. R. App. P. 7. "'Costs' referred to in Rule 7 are those that may be taxed against an unsuccessful litigant under Federal Rule of Appellate Procedure 39" and which "have their source in 28 U.S.C. § 1920." Hirschensohn v. Lawyers Title Ins. Corp., No. 96-7312, 1997 U.S. App. LEXIS 13793, at *3 (3d Cir. 1997). Costs which are taxable pursuant to Rule 39 include "printing and producing copies of briefs, appendices, records, court reporter transcripts, premiums or costs for supersedeas bonds, or other bonds to secure rights pending appeal, and fees for filing the notice of appeal." In re Diet Drugs Prods. Liab. Litig., MDL No. 1203, 2000 U.S. Dist. LEXIS 16085, at *11

Objectors-Appellants Eugene Clasby, Frank Giganti, Lillian Rogers, Kathleen McWhorter, William McWhorter, Melissa Nolet, James Geha, Gary Marcus and Rhondo Marcus be required to post an appeal bond of $150,000. The Motion is granted in that the Objectors-Appellants shall be jointly and severally responsible for posting a $25,000 bond to ensure payment of costs incurred by the End Payor Plaintiffs on appeal should they prevail.

BY THE COURT:

/s/ John R. Padova

John R. Padova, J.

(E.D. Pa. Nov. 6, 2000) (citing Hirschensohn, 1997 U.S. App. LEXIS 13793, at *1). End Payor Plaintiffs have cited no authority in this Circuit for the imposition of increased administrative costs as taxable costs on appeal. Accordingly, the Court concludes that, for purposes of this litigation, costs for which a bond may be required pursuant to Rule 7 are limited to costs taxable pursuant to Rule 39 and 28 U.S.C. § 1920. See id. at *16. "A district court may not impose bond in an amount beyond what is necessary to ensure adequate security if to do so would effectively preclude pursuit of an appeal." Id. The Court finds that $25,000 is a reasonable estimate of End Payor Plaintiffs' taxable costs in defending these appeals, including printing and producing copies of briefs, appendices, records, and transcripts. Id. at *19. Accordingly, it is ordered that the Objector-Appellants are jointly and severally responsible for posting a $25,000 bond to ensure the payment of the costs of End Payor Plaintiffs if they prevail on appeal.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN M. DEWEY, et al.

Plaintiffs,

vs.

VOLKSWAGEN AG, et al.,

Defendants,

JACQUELINE DELGUERCIO, et al.

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA, INC., et al.

Defendants.

Case Nos. 07-2249, 07-2361 (consolidated)

Newark, New Jersey
October 15, 2010

TRANSCRIPT OF RECORDED OPINION
(Revised, see errata sheet)
BY THE HONORABLE PATTY SHWARTZ
UNITED STATES MAGISTRATE JUDGE

This oral opinion has been reviewed and revised in accordance with L. Civ. R. 52.1

APPEARANCES:

For the Plaintiffs: No one was present

For the Defendants: No one was present

Audio Operator:
Transcription Service: KING TRANSCRIPTION SERVICES
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

(Commencement of proceedings)

THE COURT: This matter is before the Court by way of plaintiffs' motions to: (1) compel the objectors who filed appeals, hereinafter "appellant objectors," to post an appeal bond pursuant to Federal Rules of Appellate Procedure 7; and (2) the West objectors' cross-motion to enjoin the appellant objectors and appellees from settling any appeal in this action without seeking approval from this Court. For the reasons set forth in this Opinion, the motions are granted in part and denied in part.

The plaintiffs initiated two class actions against defendants Volkswagen of America, Inc., Volkswagen AG, Volkswagen BG, and Volkswagen Group of America, and Audi AG, and Audi of America, LLC, for alleged defects in certain cars. On May 11, 2007, plaintiffs John M. Dewey, Patrick DeMartino, and Patricia Romeo, hereinafter the "Dewey plaintiffs," filed a class action complaint alleging that certain VW and Audi vehicles have a defectively designed pollen filter gasket and sunroof drains. Dewey v. Volkswagen of America, Complaint Civil No. 07-2249, ECF Number 1. One week later, plaintiff Jacqueline Delguercio initiated a substantially similar class action. Delguercio v. Volkswagen of America, Inc., Civil No. 07-2361, ECF Number 1.

On June 22, 2007, the Court consolidated the cases

for pretrial purposes. Dewey, ECF Number 8; Delguercio, ECF Number 6.

According to their fourth amended complaints, the plaintiffs allege that design defects in the sunroof drain, the pollen filter, the plenum drains, and other parts of VW and Audi vehicles caused water to pool and spill over rather than drain, damaging the interior cabin, transmission, and/or electrical systems of the car. See Dewey Complaint at ECF Number 86, paragraph 3, and ECF Number 87, paragraph 8; see also Delguercio Amended Complaint, ECF Number 63 at paragraph 8.

Based on these allegations, the Dewey plaintiffs asserted claims based on the New Jersey Consumer Fraud Act, the Uniform Commercial Code, common law fraud, negligent misrepresentation, breach of the duty of good faith and fair dealing, and unjust enrichment. See Dewey Amended Complaint, ECF Number 86, paragraphs 70 through 121. Based upon these same allegations, the Delguercio plaintiffs allege that the defendants breached express and implied warranties, improperly repaired the vehicles, breached the covenant of good faith and fair dealing, made negligent misrepresentations, violated the New Jersey Consumer Fraud Act, were unjustly enriched, and engaged in fraud. See Delguercio Amended Complaint, ECF 63, paragraphs 46-97.

After more than two years of discovery, the parties

notified the Court that they were engaged in serious settlement discussions, but time was needed to obtain confirmatory discovery. As a result in September 2009, the Court suspended the pretrial deadlines and set deadlines for the parties to file a joint motion for preliminary approval of a settlement class and class settlement and for the appointment class counsel. See Dewey Orders ECF Numbers 154, 155, 157, 160, 162; Delguercio Orders, ECF Numbers 113, 114, 116, 118, 120. At that time, class and merits fact discovery were scheduled to close on September 30, 2009, expert discovery was scheduled to be completed by January 27, 2010, and the final pretrial conference was to occur on February 25, 2010. See Dewey Order, ECF Number 149; Delguercio Order, ECF Number 110.

On November 10, 2009, the United States District Judge approved the parties' request to consent to magistrate judge jurisdiction "to conduct all settlement proceedings and to enter final judgment," pursuant to 28 U.S.C. § 636. See Dewey, ECF Number 158 and 159; Delguercio, ECF Number 124.

On January 29, 2010, the parties filed a joint motion for preliminary approval of a class settlement, preliminary approval of a settlement class, and appointment of class counsel. Dewey, ECF Number 163; Delguercio, ECF Number 121. A telephonic hearing on the motion was held on the record on February 3, 2010. The Court considered the

written submissions, oral arguments, and governing law and directed that no later than February 5, 2010, the parties submit revised proposed settlement documents that included certain provisions for notice to the putative class and changes to the documentation needed to obtain reimbursement. Dewey, ECF Number 168; Delguercio, ECF Number 125. This deadline was ultimately extended until February 11, 2010. Dewey, ECF Numbers 171 and -72; Delguercio, ECF Numbers 125 and 126.

The order granting preliminary approval of the settlement class, class settlement, and appointment of class counsel was signed on February 17, 2010, and entered on February 23, 2010. Dewey, ECF Number 175; Delguercio, ECF Number 129. The order was amended on March 26, 2010, and again on April 14, 2010. Dewey, ECF Numbers 176 and 178; Delguercio, ECF Number 130.

The preliminary approval order provided for preliminary certification of a specified group of class members, and the Court incorporates by reference the class of persons described in the preliminary approval order and judgment. The proposed settlement provided for: (1) educational preventive maintenance information for all class members; (2) inspection, modification and repair of plenum and sunroof drain systems for certain qualifying class members; (3) monetary reimbursement for repair and vehicle

damage for certain qualifying class members to be paid out of an $8 million reimbursement fund; (4) donation of all unclaimed reimbursement funds to an educational, charitable, or research facility after five years; and (5) payments of $10,000 to each representative plaintiff to be paid separate from the reimbursement fund. Dewey, ECF Number 174, Attachment 1 at 15-24; Delguercio, ECF Number 128, Attachment 1 at page 15-24. The defendants also agreed to pay class counsel's fees and expenses, but no agreement concerning the amounts or methods to calculate the fees was reached. Id. at 36, paragraphs 15.2-15.3.

The amended preliminary approval order also directed that notice of the proposed settlement be communicated in the following ways: (1) direct mail to all original and subsequent owners and lessees of settlement class vehicles for whom mailing address data is available; (2) establishment of a website with an electronic version of the mailed notice and claim form; and (3) publication in *USA Today*. Dewey Order, ECF Number 178; Delguercio Order, ECF Number 130. See also Dewey, ECF Number 174, Attachment 1 at 25-27; and Delguercio, ECF Number 128, Attachment 1 at 25-27.

The summary notice was published in *USA Today* on May 7, 2010, and May 12, 2010, and notices, reimbursement forms where applicable, and a revised maintenance schedule were mailed to 4,202,925 VW class members, and 2,141,208 Audi

class members. See Dewey, ECF Number 216 at paragraphs 4-5 and 241 at paragraph 3. Most class members were given until June 15, 2010, to request exclusion from or file objections to the settlement. Dewey, ECF Numbers 176 and 178; Delguercio, ECF Number 130.

In June 2010, a second mailing was sent using updated addresses for owners and lessees of 579,088 class vehicles who did not receive the first mailed notice. Dewey, ECF Number 241 at paragraph 3. The opt-out or objection period and the claims deadlines for those who were sent this second mailing was extended until July 21, 2010, and August 30, 2010, respectively.

The settlement administrator, Rust Consulting, established the Court-court ordered website, which as of July 22, 2010, had 19,891 unique visitors. Id. at paragraph 6. As of July 22, 2010, Rust Consulting also received 1,961 emails and 14,918 claim forms. Id. at paragraphs 6, 10. Rust Consulting also established a toll-free Number, which as of July 22, 2010, received 18,137 calls. Id. at paragraph 5.

The amended preliminary approval order also appointed Mazie Slater Katz & Freeman, and Schoengold & Sporn, PC, as coclass counsel and established deadlines for filing motions for final approval and for attorneys' fees and costs. Dewey, ECF 178 at 4-5; Delguercio, ECF Number 130 at 4-5.

Subsequent orders adjusted the deadline to file motions for final approval of a settlement class and the class settlement and for attorneys' fees, and resolved disputes concerning confirmatory discovery. Dewey, ECF numbers 181, 185, 191; Delguercio, ECF Numbers 132 and 134.

Consistent with the orders on June 9, 2010, the plaintiffs filed their motion for attorneys' fees seeking an award of $22.5 million. This number was based upon plaintiffs' contention that the value of the settlement exceeded $142 million and their assertion that they were entitled to 15.83 percent of the settlement. See Dewey, ECF Numbers 194 to 201.

On July 23, 2010, the parties notified the Court that the plaintiffs agreed to seek and the defendants agreed not to oppose having the settlement valued at $90 million. See Dewey, ECF Number 238. Despite the reduction in the value the plaintiffs assigned to the value of the settlement, the plaintiffs repeated their request for the $22.5 million fee award and asserted that this request was based on their view that they are entitled to a fee equal to 25 percent of the revised settlement valuation of $90 million. See the Fairness Hearing Transcript, 139:6-144:13; see also ECF Number 255, Attachment 5.

In support of their valuation figure, the plaintiffs submitted the expert reports of economist

Dr. George Eads and appraiser Richard Hixenbaugh, and the defendants presented the expert reports of economist Dr. Janusz Ordover and automotive engineer Robert Lange. Dewey, ECF Number 219 at 35.

On June 17, 2010, the plaintiffs filed their motion for final approval of the settlement class and class settlement. Dewey, ECF Number 213.

On June 28, 2010, the defendants filed a brief joining in the request for final approval of the settlement, but disputing the plaintiffs' characterization of the pretrial process, the value of the settlement, and the likelihood the plaintiffs could succeed with class certification and prevail at trial. Dewey, ECF Numbers 215 and 217.

In addition to the positions of the parties, the Court considered objections from 203 putative class members and was informed that 1,119 putative class members had opted out of the class and the settlement. ECF Number 241 at paragraph 8.

On July 26, 2010, the Court conducted a fairness hearing. During the hearing, the Court heard oral argument from the parties and objectors who sought to be heard, and heard testimony from Dr. Eads. In an Opinion and Judgment dated July 30, 2010, the Court granted the final approval of the settlement class and class settlement and awarded class

counsel the amount of $9,207,241.19 in fees; granted the total amount of $677,534.75 to Mazie Slater Katz & Freeman and Schoengold & Sporn as reimbursement for expenses; and awarded the amount of $10,000 to each of the following class representatives: Kenneth Bayer, Jacqueline Delguercio, Patrick DeMartino, John Dewey, Lynda Gallo, Edward Griffin, Ronald Marans, Francis Nowicki, and Patricia Romeo. ECF Number 253.

Between August 20, 2010, and September 3, 2010, objectors J.M. Cooper, Robert Falkner, Katherine Falkner, Paul M. Kaufman, David T. Murray, Jennifer B. Murray, James Pentz, David Sacks, Lester Brickman, Darren McKinney, Michael Sullivan, Joshua West, Daniel Sibley, and David Stevens, either pro se or through counsel, filed notices of appeal. See Dewey, ECF Numbers 257, 260, 261, and 268.

In addition, the plaintiffs and the defendants filed appeals limited to the fee decision. Dewey, ECF Number 262 and 263.

Thereafter on September 7, 2010, and September 13, 2010, the plaintiffs filed motions for an order directing the appellant objectors to file a bond pursuant to Fed. R. App. P. 7. Dewey, ECF Number 266, 267, and 282.

On September 20, 2010, the defendants notified the Court that they joined plaintiffs' motions to compel the appellant objectors to post a bond. Dewey, ECF Number 274.

Although plaintiffs, defendants, and certain objectors filed appeals, plaintiffs' present motions seek only an order compelling the objectors to post a bond.

On September 17, 2010, appellant objector David Sacks filed a response to the plaintiffs' amended motion for a bond. Dewey, ECF Number 273.

On September 20, 2010, appellant objectors Lester Brickman, Darren McKinney, Michael Sullivan, and Joshua West, hereinafter the "West objectors," filed a brief opposing the motions, and a cross-motion for an injunction to require Court approval for any settlement that a party or objector may reach while the case is on appeal. Dewey, ECF Number 275 and 276 and 277.

On September 23, 2010, J.M. Cooper, Robert Falkner, Katherine Falkner, Paul P. Kaufman, David T. Murray, Jennifer B. Murray and James Pentz, hereinafter the "Kaufman objectors," joined the portion of the brief the West objectors filed in opposition to plaintiffs' motions requiring appellant objectors to post a bond, but did not join the West objectors' cross-motion for an injunction. ECF Number 280.

In the notice of limited joinder and brief, the Kaufman objectors represented they would be filing a motion in opposition to the West objectors' motion for an injunction. To date, however, the Court has not received the

opposition.

On October 1, 2010, objector appellants David Stevens and Daniel Sibley filed an objection to plaintiffs' motions for a bond. ECF Number 286.

On October 7, 2010, and October 8, 2010, the plaintiffs filed reply briefs in further support of their motions for a bond and in opposition to the cross-motion for an injunction. ECF Numbers 288 through 290.

In support of their motions, the plaintiffs argue that the Court should compel the objectors to post a bond pursuant to Fed. R. App. P. 7 as a condition of prosecuting their appeals because the bond is necessary to ensure the reimbursement for the "significant" costs of obtaining any necessary transcripts, printing costs, and other copying costs, pursuant to 28 U.S.C. § 1920 and Fed. R. App. P. 39(e) the plaintiffs will incur defending the appeal. Dewey, ECF Number 267, Exhibit 3 at 2-4. They assert that a bond in the amount of $25,000 is a reasonable estimate for such expenses and request that each objector filing and maintaining an appeal be held jointly and severally liable for the amount of that bond.

Plaintiffs also contend that the bond is reasonable and necessary to secure the anticipated the damages resulting from the delay in the implementation of the class action settlement.

Plaintiffs also argue that the appellant objectors' appeals lack merit because: (1) they have not presented a sufficient basis for the Third Circuit to reject or modify the settlement; and (2) the frivolity of the appeals by so-called "professional objectors" necessitates assurance in the form of a bond that the appellees will be able to recover the cost of an appeal being pursued solely for the financial gain associated with litigation of the appeal of the settlement.

The plaintiffs filed a supplemental brief arguing that appellant objectors Daniel Sibley and David Stevens should be required to also post a bond as well as requesting that Sibley and Stevens be jointly and severally liable for the amount of the bond. Dewey, ECF Number 282.

In addition to the arguments advanced in their brief dated September 24, 2010, the plaintiffs argue that these two appellant objectors should be required to post a bond because: (1) these objectors avoided paying basic fees to this Court and the Court of Appeals; and (2) pursuing these particular objectors to recover costs awarded would be burdensome as they reside in Texas.

Seven appellant objectors have filed opposition to plaintiffs' motion. The West objectors have argued that the proposed $25,000 appeal bond violates the federal rules. ECF Number 276. The West objectors argue that the plaintiffs

presented no evidence to suggest that $25,000 reflects a reasonable estimate of costs that class counsel can recover pursuant to Federal Rule of Appellate Procedure 39. Insofar as the plaintiffs set forth their anticipated costs, the West objectors assert that the plaintiffs are actually requesting the imposition of a supersedeas bond and that this Court is without authority to impose a supersedeas bond as the appellants have not sought a stay of judgment.

The West objectors also argue that the plaintiffs' purported factual basis concerning the alleged motivation for their appeal does not apply to them as their appeal is brought in good faith and it was not filed to extract a settlement. In any event, they argue that the appellate court should decide the merits of their appeal.

Finally, the West objectors advance several policy reasons for rejecting the imposition of an appeal bond, namely, that (1) objectors play an important role as a source of independent scrutiny of a class settlement; (2) bonds frustrate the Supreme Court's framework for class action objections; (3) equitable considerations weigh against imposing an appeal bond on the West objectors because of their counsel's non-profit status; (4) an appeal bond would chill appeals by good-faith objectors; and (5) the plaintiffs' concerns are better addressed by the West objectors' cross-motion to enjoin any settlement of the

pending appeals absent Court approval as this remedy will weed out objectors who are appealing in bad faith and is sound as a matter of public policy.

In opposition to the motion, appellant objector David Sacks argues that (1) requiring the posting of the bond will effectively prevent review of the settlement because the low value of the settlement makes posting a bond financially unworthwhile; and (2) plaintiffs' request for a bond in amount of $25,000 lacks factual support as costs to class counsel are likely to be significantly lower than $25,000. Appellant objector Sacks requests that in the event the Court compels him and other objectors to post a bond, then class counsel should be required to do the same.

Appellant objectors David Stevens and Daniel Sibley also oppose the motion, join the opposition other objectors filed, and further argued that (1) their Texas residency is not a factor to be considered in the imposition of an appeal bond; (2) the appeal was filed in good faith; and (3) Stevens and Sibley are not professional objectors. ECF Number 286.

In reply to the appellant objectors' opposition to their motion, the plaintiffs argue that (1) the appeal bond will ensure the plaintiffs are reimbursed for the expenses of the appeal and avoid the difficulties in collecting the costs from out-of-district objectors; (2) the amount of the bond is reasonable given the anticipated costs; (3) the West

objectors' policy arguments are irrelevant given that they address counsel and not the objectors themselves; and (4) the appeals lack merit and were filed in bad faith. ECF Number 288.

As to the West objectors' cross-motion for an injunction, plaintiffs argue the motion should be denied because the appellant objectors have failed to demonstrate that they can satisfy any of the factors necessary to obtain this relief under Fed. R. App. P. 8(a)(1)(C), and in any event, Fed. R. Civ. P. 23 requires Court approval of any settlement, and therefore, an injunction is unnecessary. ECF Number 29.

Rule 7 of the Federal Rules of Appellate Procedure provides that "in a civil case, the District Court may require the appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs of appeal." Fed. R. App. P. 7. The purpose of such bonds is to "protect the rights of appellees ..." *In re* Insurance Brokerage, MDL Number 1663, Civ. No. 045684, 2007 WL 1963063 at *2 (D.N.J. July 2, 2007, "... against the risk of non-payment by an unsuccessful appellant." *In re* AOL Time Warner, Inc., MDL 1500, Civ. No. 02-5575, 2007 WL 2741033 at *2 (S.D.N.Y. September 20, 2007). In some cases these bonds are needed to provide "some level of security to the [appellees] who have no assurances that unsuccessful

appellants have the ability to pay the costs and fees associated with opposing their appeals." Id.

The decision to require a bond and its amount is subject to the discretion of the District Court. Fed. R. App. P. 7 (1979) Advisory Committee note. The "District Court, familiar with the contours of the case appealed, has the discretion to impose a bond which reflects its determination of the likely outcome of the appeal." Adsani v. Miller, 139 F.3d 67, 79 (2d Cir. 1998) (quoted in *In re* Insurance Brokerage, 2007 WL 1963063 at *2); see also Federal Prescription Services, Inc., v. American Pharmaceutical Association, 636 F.2d 755, 757 n.2 (D.C. Cir. 1980).

The following factors have guided courts when they exercise their discretion regarding whether to require a bond and its amount: (1) whether the amount of the bond is necessary to ensure adequate security, *In re* Diet Drugs, MDL 1203, Civ. No. 99-20593, 2000 WL 1665134 at *5 (E.D. Pa. November 6, 2000); (2) whether the amount of the bond will effectively preclude pursuit of the appeal; Id.; (3) the appellant's financial ability to post the bond, *In re* Initial Public Offering Securities Litigation, MDL 21-92, 2010 WL 2884794 at *1 (S.D.N.Y. July 20, 2010); Fleury v. Richemont North America, Inc., Civil No. 05-4525, 2008 WL 4680033 at *6 (N.D. Cal. October 21, 2008); and (4) the risk that the

appellant will not pay the costs if it loses the appeal; *In re* Initial, 2010 WL 2884794 at *1; Fleury, 2008 WL 4680033 at *6; *In re* AOL Time Warner, 2007 WL 2741033 at *2.

While it is tempting to also consider whether or not the appeal is frivolous when deciding whether or not to require a bond, and cases such as Adsani suggest that the potential outcome of the appeal can inform the bond decision, the "Court of Appeals is the best forum to litigate the merits of appeal and to account for any frivolity that harms the [appellees]." *In re* American Investor Life Insurance Company Annuity Marketing and Sales Practices Litigation, 695 F. Supp. 2d 157, 166 (E.D. Pa. 2010) (citing *In re* American President's Line, 779 F.2d 714, 717-18 (D.C. Cir. 1985)).

As the *In re* Diet Drug court observed, "Rule 7 was not intended to be used as a means of discouraging appeals, even if perceived to be frivolous," as the appellee has "adequate remedies available to it in the court of appeals" to seek relief for having to defend a frivolous appeal. *In re* Diet Drugs, 2000 WL 1665134 at *5 (citing *In re* American President Lines, 779 F.2d at 717); see also Fed. R. App. P. 38 (setting forth the procedure for seeking compensation for frivolous appeals); see also Vaughn v. American Honda American Motor Company, 507 F.3d 295, 299 (5th Cir. 2007) (discussing how merit or lack thereof of an appeal is a decision for the appellate process and Rule 7 cannot be

used to "erect a barrier" to even a frivolous appeal). As the Vaughn Court observed, even if the objectors are using the appeal "as a means of leveraging compensation for themselves or their counsel [and even where the] detriment to the class members can be substantial ... imposing too great a burden on an objector's right to appeal may discourage meritorious appeals or tend to insulate a district court's judgment in approving a class settlement from appellate review." Id. 300.

Considering each factor, the Court finds that a cost bond is warranted. First, the appellant objectors have not provided any information that indicates they are financially unable to post a bond. Fleury, 2008 WL 4680033 at *7. This failing is sometimes construed as showing that the appellants are not arguing they lack the ability to post a bond. *In re* AOL, 2007 WL 2741033 at *2; Baker v. Urban Outfitter, Civ. No. 01-5440, 2006 WL 3635392 at *1 (S.D.N.Y. December 12, 2006). Thus, whether viewed as a lack of proof of financial inability or a decision not to assert a lack of ability to pay, the record does not show that a bond would impose a "impermissible barrier to appeal." Adsani, 139 F.3d at 79.

Second, the record is silent as to whether or not the appellants will pay the costs if they lose the appeal. The lack of any assurance from any appellant objector

supports the need for a bond. See *In re* Currency Conversion Fee Antitrust Litigation, MDL Number M 21-95, 2010 WL 1253741 at *2 (S.D.N.Y. March 5, 2010).

Third, if the appellant objectors, many or all of whom are located outside this District, are unsuccessful, then the appellees would need to institute a collections action against them in their home states to recover costs. Id.; see also *In re* Initial, 2010 WL 2884794 at *2 n.17. This presents a risk of non-payment and favors requiring a cost bond.

As to whether or not bad faith or vexatiousness supports requiring a bond, the appellees argue the appellant objectors' challenges to the settlement are without merit. While there is no need to address the merits of the appeal in the context of this motion, the Court cannot but help note that it is confident that the Court of Appeals will affirm the decisions to approve the settlement as well as the reduced attorneys' fee award.

As to the objectors' complaint that the Court failed to consider the different relief provided to different groups of class members, this argument is simply belied by the Opinion. See Dewey v. Volkswagen of America, Civ. No. 07-2249, 2010 WL 3018305 at *19 (D.N.J. July 30, 2010).

Furthermore, as explained in the Opinion, the fact

that the class representatives did not fall into each of the separate classes does not constitute a conflict of interest between the representatives and of such class members since they had common complaints and sought common relief. Id. at 9 and 19. Moreover, the appellant objectors ignore the fact that they had a right to opt out of the settlement if they did not want to accept the relief it provided.

As to the appellant objectors' complaint that the Court did not allow for a Daubert challenge to the valuation expert, the record shows that the Court, in fact, examined the valuation expert as part of its gatekeeper role and rejected aspects of the expert's opinion for its failure to meet standards to show that it had sufficient basis in law or fact. Id. at 31-33. While the word "Daubert" may not have been used, the scrutiny contemplated in the Daubert decision and its progeny was clearly applied.

As to the claims the Court erred in assigning value to the educational preventive maintenance component, the Court provided its reasons for assigning value to this part of the settlement. Id. at 32-33.

Furthermore, as to the claim that the Court overvalued the settlement, the Court provided its analysis, and the objectors never provided a competing expert.

As to the complaint that the objectors were not permitted to cross-examine the expert during the hearing, the

objectors are unlikely to show that the Court abused its discretion to control the examination or that its failure to permit cross-examination was harmful. In its Opinion and on the record of the Fairness Hearing, the Court set forth its reasons why it declined to permit such an examination, and the Court incorporates those reasons herein. Id. 5 n.10. Moreover, the appellant objectors fail to identify the areas they would have probed but were not or how their examination would have changed the results, particularly given that the Court considered all objections to the expert and his opinion and thoroughly examined him and his report.

As to the complaint that the Court wrongly failed to consider the late-filed submission, the Court set deadlines which were clearly understood by all objectors and provided sufficient time to submit any and all arguments. Id. at 2, 4, and 5. Moreover, there is no showing that the untimely arguments would have changed the outcome.

As to the complaint that the fee award assumes one hundred percent participation, such a complaint is erroneous. In fact, the Court rejected the claim that there would be one hundred percent participation, and this finding, among others, reduced the value of the settlement and the fee award. Id. at 34.

Thus, while frivolity and merit will be decided by the Circuit Court, the record and the Opinion support a

conclusion that the appeals are not likely to succeed.

Appellees further argue since certain of the appellant objectors are "professional objectors," that the Court should require the bond to be posted. While other courts have described the professional objectors in less than flattering terms, id. at 16 and n.19, and many courts have required that objectors post bonds, see, e.g., *In re* Initial, 2010 WL 2884794 at *3; *In re* Cardizem CD Antitrust Litigation, 391 F.3d 812, 814 (6th Cir. 2004); *In re* Heritage Bond Litigation, Civ. No. 02-382 and Civ. No. 01-5152, 2005 WL 2401111 at *4 (C.D. Cal. September 12, 2005); American Investor, 695 F. Supp. 2d at 167; *In re* Insurance Brokerage, 2007 WL 1963063 at *5; *In re* Diet Drug, 2000 WL 1665134 at *5, the Court declines to require a Rule 7 bond on this basis alone. Rather, given the absence of any indicator they cannot afford a bond, given the lack of assurance that the costs will be paid if the appeal is lost, and the fact that the appellant objectors are geographically dispersed which will make collection challenging, the Court finds a bond is warranted.

Having found that a bond is required, the Court now turns to the amount of the bond. See, e.g., Fleury, 2008 WL 4680033 at *8; *In re* Diet Drug, 2008 WL 1665134 at *5. The amount should cover the costs that are potentially recoverable. Under Rule 7, recoverable costs are "those to

be taxed against an unsuccessful litigant under Federal Rule of Appellate Procedure 39." Hirschensohn v. Lawyers Title Insurance Corp., Civ. No. 96-7312, 1997 WL 307777 at *1 (3d Cir. April 17, 1997); see also *In re* American President Lines, 779 F.2d 718-19. Rule 39 defines covered costs as those associated with "printing and producing copies of briefs, appendices, records, court reporter, transcripts, premiums or costs for supersedeas bonds or other bonds to secure rights pending appeal and fees for filing the notice of appeal." *In re* Insurance Brokerage, 2007 WL 1963063 at *2. This covered cost "item stems from 28 U.S.C. § 1920." Id.

In the context of cost bonds under Rule 7, courts have not included administrative costs incurred while the appeal is pending, Nicholas v. SmithKline Beecham Corp., Civ. Number 00-6222 at *1 n.2 (E.D. Pa. November 15, 2005) attached to ECF Number 249), damages to the class as a result of the appeal or its frivolity. *In re* American Investors, 695 F. Supp. 2d at 166, Fleury, 2008 WL 4680033 at *8. Accord *In re* Initial, 2010 WL 2884794 at *4.

As stated previously, the recoverable costs include the preparation and transmission of the record, the reporter's transcript, and filing fees. According to the certification of Samuel Sporn, Esq., the estimated costs associated with appeal are as follows: (1) number of pages:

4,098; (2) cost and number of bound copies, four copies for the appellate court and one for each objector group: $500 to $700; (3) costs to bind, serve and file supplemental appendix: $22,250 to $30,000. See the Certification of Samuel Sporn dated October 7, 2010, at paragraphs 6 through 9.

These estimates are consistent with the case law and the imposition of $25,000 bonds. *In re* Initial, 2010 WL 2884794 at *3 (requiring a $25,000 bond to cover tens of thousands of dollars in copy costs of a voluminous record); *In re* Diet Drugs, 2000 WL 1665134 at *6 (requiring a $25,000 bond because the copies of the brief for each of the 87 attorneys who must receive copies "may run in the tens of thousands of dollars"); see also American Investor, 695 F. Supp. 2d at 167 (imposing a $25,000 bond); *In re* Insurance Brokerage, 2007 WL 1963063 at *5 (imposing $25,000 bonds).

Notably, however, in this case, every side appealed. The plaintiffs and defendants appealed the Court's fee decision, and the appellant objectors have appealed both the decision approving the settlement and the fee award. Thus, there will be costs associated with the appellate process regardless of whether or not the appellant objectors filed appeals. They now are just greater as the appellant objectors are appealing the decision to approve the settlement where the other appeals do not. Cf. *In re* Diet

Drugs, 2010 WL 1665134. As a result, the objectors' appeal will lead to costs that would not be expended by plaintiffs and defendants since each challenged only the fee award. Nonetheless, because of the additional expense that will be incurred because of the nature of the objectors' appeal, which challenges decisions not challenged by the parties, and for the reasons already stated, the Court will require a bond, but will not require each objector group to file a separate bond. Rather, the Court will require all appellant objectors to post a single bond to cover taxable costs of up to $25,000. They will be jointly and severally responsible to post the bond and under which they will be jointly and severally liable. Given the number of objectors who can share the cost of the bond, this arrangement will adequately secure recovery of costs should the class prevail, but will not "work a financial hardship on the exercise of the objectors' rights to appeal." *In re* Diet Drugs, 2000 WL 1665134 at *6 (quoted with approval in *In re* Insurance Brokerage, 2007 WL 1963063 at *3).

Objector Sacks asserts that if he is ordered to post a bond, then the class should also post a bond since they also filed an appeal that will require the expenditure of resources to oppose. ECF 273 at 4.

Neither plaintiffs nor defendants oppose this request, and given the lack of their opposition, they too

will be required to post bonds. Thus, the plaintiffs and defendants respectfully will also be required to post a bond for costs of $25,000. See *In re* Initial, 2010 WL, 2884794 at *4.

As to the cross-motion to enjoin any settlement of the appeal without approval from this Court, the Court finds that such an injunction is unnecessary as Rule 23 of the Federal Rules of Civil Procedure already bar settlements of class issues absent court approval. See Fed. R. Civ. P. 23(e)(5). For this reason, the Court denies the requested injunction.

For all of these reasons, the motions to require the appellant objectors to post a single bond pursuant to Fed. R. App. P. 7 is granted as follows: All objectors who filed appeals are jointly and severally responsible for the posting of a single bond in the amount of $25,000 pursuant to Federal Rule of Appellate Procedure 7 and will be jointly and severally liable. The plaintiffs are jointly and severally responsible for the posting of a bond in the amount of $25,000 pursuant to Fed. R. App. P. 7 and will be jointly and severally liable under it. The defendants are jointly and severally responsible for posting a bond in the amount of $25,000 pursuant to Fed. R. App. P. 7 and will be jointly and severally liable under it. The cross-motion for an injunction to bar any party from reaching a settlement

without Court approval denied.

An Order consistent with this Opinion will be issued.

(Conclusion of proceedings)

Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 30 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

S/ *Sara L. Kern* October 26, 2010

Signature of Approved Transcriber Date

Sara L. Kern, CET**D-338
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E R R A T A

1. Page 8, Line 20 date changed from July 27 to July 26 (requested by Dina Mastellone).

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN M. DEWEY, et al.,	:	
Plaintiffs,	:	
v.	:	**Civil Action No. 07-2249(FSH)**
VOLKSWAGEN OF AMERICA, INC., et al.,	:	**ORDER**
Defendants.	:	

This matter having come before the Court on the motions of the plaintiffs, in which the defendants join, for an Order directing the appellant objectors to post a cost bond pursuant to Fed. R. App. P. 7 and the cross-motion of certain appellant objectors to enjoin the settlement of any appeal without court approval;

and the Court having considered the submissions, record of proceedings, and governing law;

and for the reasons set forth in the Opinion delivered on the record on October 15, 2010;[1]

and for good cause shown

IT IS ON THIS 15th day of October, 2010

ORDERED that the motions to require the objectors to post bonds pursuant to Fed. R. App. P. 7 [ECF Nos. 266, 267, 282] is granted as follows:

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[1]A transcript of the Opinion can be obtained by contacting King Transcription Service at 973-237-6080.

1. All objectors who filed appeals are jointly and severally responsible for the posting of a single bond in the amount of $25,000 pursuant to Fed. R. App. P. 7 under which they will be jointly and severally liable;

2. The plaintiffs are jointly and severally responsible for the posting of a bond in the amount of $25,000 pursuant to Fed. R. App. P. 7 under which they will be jointly and severally liable;

3. The defendants are jointly and severally responsible for posting a bond in the amount of $25,000 pursuant to Fed. R. App. P. 7 under which they will be jointly and severally liable; and

IT IS FURTHER ORDERED that the cross-motion for an injunction to bar any party from settlement without court approval [ECF No. 275] is denied.

s/Patty Shwartz
UNITED STATES MAGISTRATE JUDGE

EXHIBIT D

Motion to Compel Discovery From Objector Hull - Appendix A

Examples of Cases in Which Christopher Bandas Has Filed Objections and Dismissed, Abandoned or Withdrawn the Objections or Appeal Without Attaining Settlement Changes or Additional Benefits for the Class

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
Brown v. Wal-Mart Stores, Inc. (Ill. Cir. Ct., Fourteenth Judicial Cir., No. 01 L 85)	Jill Carlson	Relevant excerpts from 10/29/09 "Order Denying Objections to the Settlement and Fees and the Motion to Intervene and for Pro Hac Vice Admission": "Christopher Bandas … is a Texas lawyer well known for his practice of routinely filing objections in class action settlements across the country. "The Bandas Objection filed on behalf of Ms. Carlson is a generic boilerplate objection prepared and filed by attorneys working for their own personal benefit and not for the benefit of this Class or for those lawyers' client. The record before the Court demonstrates that Bandas is a professional objector who is improperly attempting to 'hijack' the settlement of this case from deserving class members and dedicated, hard working counsel, solely to coerce ill-gotten, inappropriate and unspecified 'legal fees.' Bandas has filed virtually identical, frivolous objections in South Carolina, Iowa, Missouri and Florida in settlements of similar wage and hour class actions against Wal-Mart. "In Missouri, Bandas' local counsel appeared at the final fairness hearing but only to withdraw as counsel due to the fact that he could not in 'good conscience…continue to work toward the strategic objectives outlined…by Mr. Bandas.' Judge Midkiff entered separate orders nullifying the Bandas objection and denying his motion for admission pro hac vice. … This did not dissuade Bandas from filing a Notice of Appeal (with new local counsel)…	Unknown.	Unknown.

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
		"The Court finds that a lack of involvement and participation by Ms. Carlson and her counsel, combined with their attempt to inject themselves at the last minute into this eight year litigation constitutes an effort to extort money from the Class and/or Class Counsel. Though filed by two lawyers, the Bandas Objection offers nothing in the way of specific criticisms of the proposed Settlement. The content of the Bandas Objection demonstrates that neither Ms. Carlson nor her counsel has ever visited the settlement website or read the Stipulation of Settlement in this case. "The Court therefore strikes the Bandas Objection for failure of proof, and failure to demonstrate that the objector is acting on behalf of the Class. "In *In re: Dynamic Random Access Memory Antitrust Litigation*, filed in the Northern District of California, Bandas withdrew his objection after 'further investigation,' which revealed that Bandas wholly failed to adhere to his Rule 11 obligations to thoroughly investigate his client's claims. "In Miller County, Arkansas, attorney Bandas filed a canned objection in *Lane's Gifts and Collectibles, LLC v. Yahoo! Inc.* The court denied the objection. Attorney Bandas then appealed, but he withdrew the appeal 48 hours later. "Most recently, in March 2009, Bandas withdrew an objection to a proposed settlement he filed in a class action pending in Oklahoma, *Sacket v. Great Plains Pipeline Co., et al.* The withdrawal came only after counsel for the class vehemently opposed the objection, highlighting Bandas' history of filing canned objections at the last moment in an effort to extort attorneys' fees."		

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
Carter v. Wal-Mart Stores, Inc. (S.C. Ct. Com. Pleas, Colleton Cty., No. 06-CP-I5-839)	Tabitha Forward	Relevant excerpts from 6/3/09 "Order Denying Objections to Settlement Between Class Plaintiffs and Wal-Mart": "The second objection … was purportedly filed on behalf of a class member by a member of the South Carolina Bar and Christopher Bandas, a Texas lawyer well known for his practice of routinely filing objections in class action settlements across the country. The Court was informed that Mr. Bandas and a Missouri attorney had filed a virtually identical objection in *Hale v. Wal-Mart*, pending in Missouri. Bandas' Missouri objection was nullified after his local counsel withdrew and no one appeared on Bandas' behalf at the Missouri Fairness Hearing. "[I]n spite of the fact that no one appeared to offer any evidence or testimony in support of the Bandas objection, in spite of the fact that the Bandas objection fails to meet the procedural requirements established by this Court, and in spite of the fact that Mr. Bandas is a serial professional objector, I have reviewed and considered the Bandas objection on its merits. The Court finds that, for a plethora of reasons, the Bandas objection lacks substantive merit."	Unknown filing date.	Voluntarily dismissed (11/19/09).
In re Cellphone Termination Fee Cases, (Alameda Super. Ct., JCCP No. 4332)	Sulekha Anand	The 6/10/08 Final Approval Order and Judgment makes no mention of objections.	Filed 6/26/08 (Cal. App. 1st Dist., No. A122765).	The California Court of Appeal affirmed the judgment. 180 Cal. App. 4th 1110 (2009), *rev. denied*, 2010 Cal. LEXIS 3458 (Apr. 14, 2010).
Checkmate Strategic Group v. Yahoo! Inc. (C.D. Cal., No. 05-cv-04588-CAS-FMO)	Backwater Safari Guide Service; Larry Ebest; Ruben Lerma	Other objectors to the settlement withdrew their objections prior to the entry of the 3/26/07 final approval order and judgment (Dkt. 200).	Filed 4/26/07 (9th Cir., No. 07-55597).	Voluntarily dismissed pursuant to stipulation (Dkt. 8, 7/31/07).

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
Closson v. Bank of America (San Francisco Super. Ct., No. CGC-436877)	Doris Saint; Aaron Petrus; Jan L. Petrus	Overruled (8/3/09 Order Finally Approving Class Action Settlement).	Filed 9/1/09 (Cal. App. 1st Dist., No. A125963).	Voluntarily dismissed (6/23/11).
Conroy v. 3M Corporation (N.D. Cal., No. C 00-2810 CW)	Lillian Rogers	Final approval order and judgment entered 4/21/06. The Court granted plaintiffs' motion to require Bandas to post an appellate cost bond totaling $431,167. "The Court finds that the Bandas Law Firm and Ms. Rogers' objections to the proposed settlement were unfounded, and therefore views their appeals as unlikely to succeed. … Ms. Rogers' objections were patently frivolous: her cookie-cutter written objection bore no particular relationship to the circumstances of the settlement here, and at the hearing, her counsel erroneously referred to this case as involving 'defective' tape." 2006 U.S. Dist. LEXIS 96169, at *10-11 (N.D. Cal. Aug. 10, 2006).	Bandas Law Firm, P.C. appeal of final approval order filed 5/25/06 (9th Cir., No. 06-15980). Bandas Law Firm, P.C. appeal of bond order filed 8/21/06 (9th Cir., No. 06-16627).	Appeal of final approval order voluntarily dismissed (9/22/06). Appeal of bond order voluntarily dismissed (9/19/06).
In re Dynamic Random Access Memory (DRAM) Antitrust Litig. (N.D. Cal., Master File No. M-02-1486-PJH, MDL No. 1486)	Erwin Bruder; Michael Richline, dba Richline Technical Services	Bruder and Richline objections filed 10/3/06, withdrawn 10/31/06.	Not filed.	Not applicable.
Fleury v. Richemont North America, Inc. (N.D. Cal., No. C-05-4525 EMC)	Mary Meyer	"[T]he Court has considered the objections that were made but none persuade the Court that the settlement should be further altered." 7/3/08 final approval order (Dkt. 278) at 34.	Appeal of final approval order filed 7/23/08 (9th Cir., No. 08-16724). Appeal of fee order filed 8/13/08 (9th Cir., No. 08-16995).	Both appeals voluntarily dismissed (Dkt. 11, 13, 12/9/08). Stipulated settlement of 12/4/08 in which plaintiffs and defendants paid a combined $55,000 to Meyer's counsel Bandas and Frank Liuzzi.

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
Hale v. Wal-Mart Stores, Inc. (Mo. Cir. Ct., Jackson Cty., No. 01 CV 218710)	Debbie Taylor	Unknown.	Filed 7/2/09.	Voluntarily dismissed (11/10/09).
Lane's Gifts and Collectibles, L.L.C. v. Yahoo! Inc. (Ark. Cir. Ct., Miller Cty., No. CV-2005-52-1)	Depo Express; Christopher Bandas; Bandas Law Firm	Final approval order and judgment, and order denying objectors' motion to intervene entered 7/26/06 and 8/1/06.	Filed 8/23/06; withdrawn shortly thereafter.	Not applicable.
Lobo Exploration Company v. BP America Production Company (Okla. Dist. Ct., Beaver Cty., No. CJ-97-72)	Vernon Scott	In its 11/14/05 "Order Striking the 'Objection' of Vernon Scott and Denying the Motion of Christopher Bandas to be Admitted Pro Hac Vice," the court found that Bandas's client was not a class member. "Mr. Scott purports to be a royalty owner in BP America operated wells – this action involves working interest owners, and has absolutely nothing to do with royalty interests. Accordingly, Mr. Scott is not a Class Member and lacks standing to object to the Settlement or to the request for Fees and Costs." The objection was also found to be untimely. A month later, Bandas filed an appeal on behalf of the same objector.	Filed 12/15/05.	Unknown.
In re: Managed Care Litig. (S.D. Fla., No. 00-MD-01334)	Ray G. Hooper. M.D.	The 3/15/06 final approval order (Dkt. 4876) indicated that the court had considered the various objections.	Filed 4/12/06 (11th Cir., No. 06-12354-E).	Voluntarily dismissed (on or about 5/9/06).
Mussmann v. Wal-Mart Stores, Inc. (Iowa Dist. Ct., Clinton Cty., No. LACV-27486)	Terry Healy	Relevant excerpts from 10/13/09 "Order Regarding Terry Healy's Objection and Motion to Intervene": "Mr. Healy became involved in this lawsuit after being contacted by attorney Jim Roth at the request of Texas attorney Christopher Bandas. Attorney Bandas has filed objections in other similar lawsuits filed in other states. Mr. Bandas is a professional objector counsel.	Not filed.	Not applicable.

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
		"Mr. Healy knew from the first conversation with Mr. Roth that 'Mr. Bandas was behind this,' and that 'Mr. Bandas was doing this all across the country.' "Neither attorney Bandas, nor attorney Roth advised Mr. Healy that attorney Bandas had been found by a Florida court in the *Ouellette* Order to be engaging in a conspiracy with his clients and co-counsel to extort money from class members and class counsel, through a similar practice of objecting to the proposed settlement in the Florida Wal-Mart lawsuit. "Terry Healy's 'canned' objection in this matter closely resembles the numerous other objections filed by attorney Bandas in other jurisdictions where Wal-Mart settlements have been finally approved, including South Carolina, Florida and Missouri. The consistency of attorney Bandas' errors and the similarity between attorney Bandas' objections across different cases demonstrates the canned nature of the objection and reveals attorney Bandas' true motives. "It is obvious here that the attorneys initiating Mr. Healy's objection expended minimal time and resources, by filing a 'canned' objection to the proposed settlement and then not participating or appearing in any formal sense. In those circumstances, the merits of the objection appear to be of little consequence to the professional objector; causing delay in the settlement process generates their fees and payments, not proving to the trial court that the proposed settlement is inappropriate. … Upon filing the notice of appeal, the professional objector simply waits for class counsel to succumb to the pressure pay the extorted fees in return for dismissing the appeal and releasing the settlement funds.		

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
		"[T]his Court concludes that attorney Christopher A. Bandas is a professional objector. The Court is concerned that attorney Bandas is seeking to wrongfully use the class action settlement and objection process for personal gain, and without any corresponding benefit to any individual objector or the settlement class as a whole. Attorney Bandas, acting through local counsel, Mr. Roth, contacted a class member who did not otherwise display any motivation to object or to intervene in the proposed class action settlement. "One Court describes these efforts by attorney Bandas and other professional objectors as 'extortion.'" (citing *Ouellette*)." Re the deposition of objector Healy: "Mr. Healy has no doubt in his mind that the *Ouellette* Court, when they are talking about extortion of money by these attorneys, including the action of Christopher Bandas. … Mr. Healy then wanted to stop the deposition, 'because I think it is a farce. … [T]he fact is that neither one of these two attorneys are willing to intercede on my behalf here, and there's something wrong with that. I'm sorry. So you know, you can bother someone else. I really don't care. … I was of the understanding I wouldn't have to give a deposition. That's a lie right there. … I'm here and neither one of these are available to help me out here. I don't really need this. So absolutely I don't want no more [sic] to [do] with this.'"		
Ouellette v. Wal-Mart Stores, Inc. (Fla. Cir. Ct., Washington Cty., No. 67-01-CA-326)	Kevin Dimla	Relevant excerpts from 8/21/09 "Order and Final Judgment Approving Settlement Between Class Plaintiffs and Wal-Mart Stores, Inc.": "The Court finds that all of the objections filed against the settlement of this case were all generic boilerplate	Filed 9/25/09 (Fla. App., 1st Dist., No. 1D09-4881).	Voluntarily dismissed (10/29/09).

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
		objections prepared and filed by a group of attorneys who the Court finds have been working through collusion for their own personal benefit and not for the benefit of this class or their clients. … The Court finds that a lack of involvement and participation of the objectors and their counsel who were not present and a lack of involvement and participation of the attorneys that were present combined with their attempt to inject themselves at the last minute into this eight year litigation constitutes an effort to extort money from the class and/or class counsel. The court struck the objections … for failure of proof, failure to demonstrate participation in the class action on behalf of the class, and failure to appear at the fairness hearing. Further, the Court finds that all of the objections … have no substantive merit and the court overrules all of the objections on that additional ground." Slip op. at ¶¶19-20.		
Savaglio v. Wal-Mart Stores, Inc. (Alameda Super. Ct., No. C-835687)	Lolita Wells	Final approval of settlement granted 4/8/10, overruling objections except as to amount of attorneys' fees. The 9/10/10 order on fees indicated that the court had "rejected all objections to the requested fee award."	Not filed.	Not applicable.
In re Smokeless Tobacco Cases I, II (San Francisco Super. Ct., JCCP Nos. 4250, 4258, 4259, 4262)	Sean Hull	Objection filed 2/4/08 in pro per. Involvement of Bandas was divulged on 2/20/08 by Dennis Bartlett, a Denver attorney who was representing Hull. Final approval granted and fees awarded 3/12/08.	Hull filed notice of appeal on 4/11/08.	Voluntarily dismissed (2/26/09).
In re: Wal-Mart Wage and Hour Employment Practices Litig. (D. Nev., MDL No. 1735)	Jessica Gaona	Final approval order of 11/2/09 (Dkt. 491) indicated that the court had considered and rejected the objections. After various objectors appealed the final approval order, the court granted plaintiffs' and defendant's motions for bond pending appeal, stating: "For the reasons articulated at the hearing conducted October 19, 2009, and for the additional reasons advanced by Plaintiff's co-lead class counsel and Defendant Wal-Mart in their respective	Filed 11/23/09 (9th Cir., No. 09-17648).	Dismissed by summary affirmance of 11/2/09 final approval order (Dkt. 47, 8/10/10).

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
		motions for bond pending appeal, the Court finds that the objections are not supported by law or the facts and are indeed meritless. "Objectors' counsel have a documented history of filing notices of appeal from orders approving other class action settlements, and thereafter dismissing said appeals when they and their clients were compensated by the settling class or counsel for the settling class. "In sum, this Court finds that the Appeals taken by Objectors Gaona, Swift, Andrews and Maddox, are frivolous and are tantamount to a stay of the Judgment entered by this Court on November 2, 2009 approving the comprehensive class settlement in this case which provides fair compensation [*18] to millions of class members, as well as injunctive relief ensuring against further loss to persons similarly situated. The Court further finds that the four Objectors should be required to file and appeal bond sufficient to secure and ensure payment of costs on appeals which in the judgment of this Court are without merit and will almost certainly be rejected by the Ninth Circuit Court of Appeal." 2010 U.S. Dist. LEXIS 21466 (D. Nev. March 8, 2010), *stay denied*, 2010 U.S. Dist. LEXIS 52001 (May 25, 2010). The objectors were ordered to pay an appeal bond of $500,000. 2010 U.S. Dist. LEXIS 21466, *18-19. In the subsequent order on objectors' motion to stay the March 8, 2010 ruling, Judge Pro stated: "The argument's [sic] by Objectors counsel that they misunderstood the law with regard to their obligations to either to comply with this Court's Order that they post an appeal bond or otherwise seek relief from that Order rings hollow. The conduct of Objectors and their counsel is compounded by their prior demand of $800,000 to cease their appeals.		

Case	Client(s)	Outcome of Objection	Appeal	Outcome of Appeal
		The obligation of Objectors to comply with this Court's Order that they post an appeal bond and the justification for their failure to do so falls on the shoulders not only of the four objectors individually, but on those of their counsel." 2010 U.S. Dist. LEXIS 52001, *15-16. On June 3, 2010, the Ninth Circuit stayed the May 25, 2010 bond order pending the appeal of the final approval order, and on August 10, 2010 affirmed the district court's order approving the settlement.		
In re: Wal-Mart Stores, Inc. Wage and Hour Litig. (N.D. Cal., No. 06-CV-02069 SBA)	Nicole Clemente; Lolita Wells	Objections filed 9/7/10; withdrawn 11/6/10.	Not filed.	Not applicable.
Wilson v. Airborne, Inc. (C.D. Cal., No. CV-05-00770)	Kervin M. Walsh	Objections overruled in final approval and fee order (Dkt. 170, 8/13/08).	Filed 9/11/08 (9th Cir., No. 08-56542).	Voluntarily dismissed per stipulation (Dkt. 18, 2/20/09).
Yoo v. Wendy's Int'l. (C.D. Cal., No. CV07-4515 (FMC (JCx))	Kervin M. Walsh	Settlement approved and fees awarded 3/9/09 (order revised 3/13/09).	Filed 4/8/09 (9th Cir., No. 09-55554).	Voluntarily dismissed (10/26/09).